

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Huntington Division

RICHARD OJEDA, individually,

Plaintiff,

Civ. Act. No. 3:19-cv-00613

Judge:

v.

DEPARTMENT OF VETERANS AFFAIRS

810 Vermont Avenue
Washington, DC 20420

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF PURSUANT TO 5 U.S.C. §552(a)(4)(B)

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff by Defendant, Department of Veterans Affairs (“VA”).

Jurisdiction and Venue

2. Plaintiff Richard Ojeda, is a private citizen, residing in Logan, West Virginia.
3. Defendant Department of Veterans Affairs is a Department of the Executive Branch of the United States Government and, includes component entities the Veterans Benefit Administration (“VBA”) and the Veterans Affairs Office of Inspector General (“VAOIG”).
4. The Southern District Court of West Virginia has jurisdiction pursuant to 5 U.S.C. §552(a)(4)(B) where it states “[t]he district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the

agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo...”

Unauthorized Access of Plaintiff’s Protected Medical Records

5. Plaintiff is a veteran of the United States Army, having served twenty-four (24) years and retiring with the rank of Major.
6. As a veteran, Plaintiff obtains medical care through facilities operated by the United States Department of Veteran Affairs.
7. The Veteran’s Benefits Administration (“VBA”) was/is a federal agency that provided assistance and compensation to veterans.
8. The VBA had offices across the United States, including an office in Huntington, West Virginia located at 640 4th Avenue, Huntington, WV 25701.
9. Between March 16, 2018 and May 24, 2018 while working as an employee of the VBA office in Huntington, West Virginia, Defendant Jeffrey Miller accessed the medical records of Known Person F¹ who was a public figure. *See Exhibit 1. Information: United States of America v. Jeffrey S. Miller, page 3, paragraph 3.*
10. Defendant Miller accessed Plaintiff’s medical records without authorization and without any legitimate work-related purpose. Defendant Miller knew he did not have the authorization to access these records but did so anyway. *Id.*
11. Between March 16, 2018 and May 24, 2018 Defendant Miller accessed the Plaintiff’s medical records without a legitimate work-related purpose. *Id.*, page 5.

¹ “Known Person F” is and was to all times relevant, Plaintiff Richard Ojeda.

12. On or about May 17, 2018, at or near Huntington, West Virginia, Defendant Miller took a photo of Known Person F's medical records and then sent that picture to another individual (Defendant John Doe) *Id.* at page 4, paragraph 10.

Timeline of Plaintiff Ojeda's FOIA Request

13. July 22, 2019: by letter to the VAOIG, Plaintiff submitted a Freedom of Information Act ("FOIA") request for the following:

- a. The Comprehensive Report of Investigation including attachments, which was completed by RAC Thomas C. Dominski, where veteran Richard Ojeda was a victim;
- b. Any and all records relating to the investigation of the unauthorized access of Richard Ojeda's medical and mental health records by Jeffrey S. Miller of the Veteran's Benefits Administration (VBA) currently being prosecuted in the United States District Court for the Southern District of West Virginia as criminal case 3:19-CR-185;
- c. Any and all emails Jeffrey S. Miller sent to anyone that contained any reference to or included any part of Richard Ojeda's protected and confidential medical and mental health information;
- d. Any and all emails forwarded, received, and replied to by Jeffrey S. Miller that contained reference to or included any part of Richard Ojeda's protected and confidential medical and mental health information;
- e. Any and all records relating to the identity of any persons, organizations, or entities solicited by Jeffrey S. Miller that received an offer to disclose or a completed disclosure of any of Richard Ojeda's protected and confidential medical and mental health information;

See Exhibit 2. Freedom of Information Act Request Pursuant to 5 U.S.C. 552 and W. Va. Code 29B-1-3, dated July 22, 2019.

Defendant VA's Failure to Comply with Plaintiff's Request

14. July 26, 2019: by letter, Ruthlee G. Bellamy, Supervisory Government Information Specialist of the VA OIG Release of Information Office informed Plaintiff's counsel that his FOIA request was assigned FOIA Tracking Number 19-00493-FOIA and that a

signed authorization and proof of identification from Plaintiff was required to process the request. *See Exhibit 3. Letter from VA OIG, dated July 26, 2019.*

15. July 26, 2019: via email, Plaintiff's counsel immediately provided to the Defendant a Certification of Identify, and a Request for Release of Health Information, believing that these two documents would suffice to complete this request.

See Exhibit 4. U.S. Department of Justice Certificate of Identity, dated July 26, 2019.

See Exhibit 5. Department of Veterans Affairs Request for and Authorization to Release Health Information, dated July 26, 2019.

16. July 26, 2019: the email from Plaintiff's counsel asked Ms. Bellamy to please advise if anything could be done to expedite this process. *See Exhibit 6. Email from Joshua D. Miller, Esq. to vaoigfoia-pa@va.gov, dated July 26, 2019.*

17. The aforementioned email was unanswered and no further correspondence from Ms. Bellamy was received, advising that the FOIA request was incomplete and/or inadequate.

18. On or about August 7, 2019, Attorney Joshua D. Miller located a telephone number for the VA Office of Inspector General and called the same hoping to speak with Ms. Bellamy; after a long "hold-time", Attorney Miller was only able to leave a voice-mail on what appeared to be a general voice-mailbox.

19. August 8, 2019: Plaintiff's counsel received another letter from Ms. Ruthlee Bellamy reporting that the "DOJ form you provided will not suffice as written authorization from your client and that he would need to provide a written statement stating he gives you access to records pertaining to himself as well as proof of his identification."

See Exhibit 7. Letter from VA OIG, dated August 8, 2019.

20. The August 8, 2019 letter further stated that FOIA requests for records that involve a personal privacy interest must contain an image of the requester's handwritten signature that nears the signature.
21. Finally this August 8, 2019 letter explained that the VAOIG was closing Plaintiff's request as it does not meet the requirement of a proper FOIA request.
22. The additional two requirements noted in this August 8, 2019 were not clearly explained in the July 26, 2019 letter from Ms. Bellamy, therefore the Plaintiff was effectively blocked and delayed from receipt of the requested information contained within his original FOIA request.
23. August 13, 2019: Michael Soybel, Attorney-Advisor, Department of Veterans Affairs, Office of Inspector General contacted Plaintiff's counsel via telephone to discuss the first FOIA request.
24. August 13, 2019: Plaintiff's counsel re-sent the first FOIA request with a specific authorization from Plaintiff along with a copy of Plaintiff's license believing that the first FOIA request would be processed with this new authorization.
See Exhibit 8. Email from Michael Kuhn to Michael Soybel, Esq. VAOIG with attached FOIA request, dated August 13, 2019.
25. August 14, 2019: via email, an acknowledgement letter was received from Ms. Bellamy assigning a new tracking number to this FOIA request of 19-00529-FOIA.
See Exhibit 9. Letter from VAOIG, dated August 14, 2019.

Damages to Plaintiff Ojeda

26. As stated herein, Plaintiff is the victim of a crime, specifically, the unauthorized access and dissemination of his protected medical health records.
27. Upon information and belief these protected records were shared with several unknown persons seeking to derail the Plaintiff's candidacy for a United States Congress Seat.
28. Upon further information and belief, the several unknown persons that have received the protected medical information were high-ranking members of the local and regional community and government, including high ranking members of the West Virginia Republican Party who could have negatively affected Plaintiff Ojeda's political campaign.
29. Plaintiff and his counsel are certain that the names included in the report of this investigation will prove a concerted effort to undermine his candidacy and forever damage his reputation.
30. Plaintiff Ojeda has further concern that Defendant Miller could have a familial relation to his congressional campaign opponent, Carol Miller.
31. The individual responsible for the initial unauthorized access of Plaintiff's medical records has a plea hearing on September 3, 2019.
32. Plaintiff is unable to effectively comment as the victim at the plea hearing without full information regarding the extent of the unauthorized access to his medical records and relating to the identity of those individuals which have seen the protected medical information.

Requested Relief

WHEREFORE, Plaintiff prays that this Court:

- A. Order Defendants to disclose the requested records in their entireties and make copies available to Plaintiff;
- B. Provide for expeditious proceedings in this action;
- C. Award Plaintiff his costs and reasonable attorney fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ *Teresa C. Toriseva*

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